

Nonprofits and Government Activity: Stay Alert

12.18.19 | Linda J. Rosenthal, JD



A few years ago, [Jerrold B. Binney](#), longtime attorney, nonprofit executive, and public-policy official, wrote a short but important article for [Nonprofit Information](#), a website that collects resources for the nonprofit sector.

In [Nonprofits: Ignore Government Trends at Your Own Risk](#) (August 29, 2017) Mr. Binney explains in clear language why *all* nonprofit organizations should be alert to what's happening in government. He summarizes the premise of his article in the first sentence: "You can bet your bottom dollar that there are government initiatives somewhere – in Washington, your state capital, or local levels – that are underway, and they may have a big impact on nonprofits generally, and maybe your nonprofit specifically."

While this is particularly true for the many organizations that rely – directly or indirectly – on government funding sources or even looser connections or partnerships with public agencies, it applies across the board to all nonprofits.

And it should be more than a one-time or occasional glance at the government landscape.

"Government machinery is not stagnant, as it constantly reacts to changing political, social and economic environments, thereby creating change to the various constituencies; nonprofits are certainly not immune."

A useful analogy is how you're trained to drive your car: always look ahead of you, while regularly checking in your side view and rear view mirrors for unexpected possible moves and sudden dangers.

Government: The Three B's

Jerrold Binney summarizes his advice: "[M]onitor the 3 B's: Bills, Budget and Bureaucracy (regulations).

Bills

“Legislative bodies at all levels introduce hundreds of bills or legislation” that could affect your organization.

Of course, the best example in the last few years on the devastating impact of a sudden change in laws is the Tax Cut and Jobs Act of 2017 (TCJA). Without much notice and little debate and consideration, the United States Congress jammed through new provisions, some of which – most notably, the expansion of the standard deduction as well as changes to the unrelated business income tax – directly affect a wide swath of nonprofits. And since legislators omitted the customary months-long transition periods, these revisions came down like a hammer on many organizations which had no chance to adjust budgets.

For many nonprofits and their advisers, the sole focus is on the laws (1) directly relating to tax exemption and charitable deductions and (2) on the federal level. While that’s important, it’s too narrow. Two recent issues addressed by legislators are beyond that scope on both points. For instance, there have been successful laws in certain states around the nation – including California – mandating a jump in minimum-wage rates. “This “... can have a substantial impact on your workforce, as well as recruitment and retention policies.”

As another example, county and local governments in many places have actively tweaked the existing laws or ordinances on the availability of property tax exemptions. A popular substitute is imposition of a payment in lieu of taxes (PILOTS) for nonprofit facilities. This type of property-tax alternative has been placed on not just the huge colleges and medical centers in metropolitan areas, but also on tiny nonprofits tucked away in small hamlets.

Budget

When the President or the Governor (or a mayor) presents the budget, “it is helpful to obtain a copy of the budget address and read it, as this address lists the spending priorities for the year. You may also want to go to the appropriate department’s website for notices about the budget.”

Particularly – but not only – at the federal level, the budget seems to be a continually moving target. We seem to leap from one continuing resolution to the next stop-gap measure, creating chaos and havoc in its wake. This uncertainty as well as rapid about-faces in funding policy and priorities trickle down through the entire national economy including to the nonprofit sector which – of course – is heavily dependent on public funding.

There have been more than a few sad stories in the nonprofit sector recently about organizations forced to close their doors suddenly and after many years of successful operation. At the state level, particularly, there have been catastrophic failures of the budgeting processes with funding suspended for months or stopped entirely. The long stalemate over the Illinois budget a few years ago as well as the current budget crisis in Alaska are examples of these cascading effects.

Bureaucracy

“Many people call the ‘bureaucracy’ the ‘hidden government.’ Well, bureaucrats really aren’t hidden but they are powerful.” They interpret, administer, and implement the laws passed by the legislative bodies at all levels of government. Their activities range from “... monitoring contracts and licensing issues related to nonprofits” to drafting and adopting new regulations. This is authority specifically delegated to them by legislatures because statutes describe laws only in general terms.

The bureaucrats most relevant to the nonprofit sector are those in the Treasury Department and one

of its agencies, the Internal Revenue Service. The key governing statute for charitable organizations in the United States is Internal Revenue Code section 501(c)(3). But that law is just 32 words long, and – so – needs huge quantities of regulations to tell the public what Congress likely meant as far as the details are concerned.

Other federal agencies also publish regulations that can have a wide effect across the economy, including nonprofit organizations. For example, the significant changes in the overtime exemption rules under the federal Fair Labor Standards Act (“FLSA”), set to take effect on January 1, 2020, were drafted by the bureaucrats in the U.S. Department of Labor.

Conclusion

Jerrold Binney explains that his advice to *monitor* government activity and legislation is entirely consistent with the rules in Internal Revenue Code section 501(c)(3) and the accompanying regulations. A “...failure to monitor what occurs at every government level can result in reversal for any business; for nonprofits it is even more imperative as governments are often our partner in providing safety net services.”

There are many national and statewide organizations that perform the service of monitoring proposed and enacted laws and regulations. A key resource, for example, is the National Council of Nonprofits that regularly publishes information and analysis.